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Comment

TO: Public Service Commission Docket No. 16-0295 Participants

FROM: Brenda Mayrack, Esq., Deputy Attorney General
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RE: Defining a “Good Faith Effort to Make Payments” for Utility Customers with
Certified Medical Conditions in Other Jurisdictions

DATE: June 30, 2016

There do not appear to be any other states that require, as Delaware does, that a medically-certified customer “make[] a good faith effort to make payments towards the utility service being provided” to avoid termination of service.¹

Several states have somewhat similar language to Delaware’s “good faith effort” standard but do not provide a more specific definition. Pennsylvania requires medically certified customers to “equitably make payments on all bills.”² Wisconsin requires that the “utility and occupant shall work together to develop resources and make reasonable payment arrangements.”³ Maryland requires that utilities, not customers, “in good faith” attempt to negotiate a reasonable alternate payment plan with all “low income” customers, not just those who are medically certified.⁴

¹ 26 *Del. C.* § 117(d). BLACK’S LAW DICTIONARY defines “good faith” as a “state of mind consisting in 1) honesty in belief or purpose, 2) faithfulness to one’s duty or obligation, 3) observance of reasonable commercial standards of fair dealing in a given trade or business, 4) absence of intent to defraud or to seek unconscionable advantage.” The DELAWARE CODE contains approximately fifty references to “good faith,” but none appear to be defined. There are thousands of Delaware court decisions discussing “good faith” in the corporate or other contexts, but none that are necessarily directly applicable here.

² 52 PA. C. § 56.114(2).

³ WIS. ADMIN. C. § PSC 113.0301.

⁴ MD. ADMIN. C. § 20.31.01.08(A).

Two states specifically define a minimum payment amount for medically certified customers:

- Illinois requires a medically certified customer to pay an amount equal to 1/12th of the total amount owing for utility services if the valid medical certification is received prior to disconnection and an amount equal to 1/4th of the total amount owing for utility services, with the remaining balance divided equally among the next nine payments, if the valid medical certification is received after disconnection.⁵
- Montana requires the utility and customer to negotiate an equitable payment arrangement that is “reasonable and consistent with the customer’s ability to pay.” If the customer fails to make payments as established, resulting in an arrearage of \$500 or more, the customer is required to enter into and comply with a monthly payment arrangement equal to the average of the last 12 months’ billing plus 1/12th of the arrearage. Failure to enter into a monthly payment arrangement and make payments will result in disconnection proceedings.⁶

Several other states require a payment plan or arrangement for medically certified customers but do not specifically define a minimum sufficient payment: District of Columbia,⁷ Iowa,⁸ Maryland,⁹ New Hampshire,¹⁰ North Dakota,¹¹ Oklahoma,¹² Pennsylvania,¹³ and Wisconsin.¹⁴

⁵ 83 ILL. ADMIN. C. § 280.160(i).

⁶ MONT. ADMIN. R. § 38.5.1411.

⁷ 15 D.C. MUN. R. § 311; 15 D.C. MUN. R. § 306.

⁸ IA. ADMIN. C. § 199-20.4(15) (“reasonable payment agreement” required); IA. ADMIN. C. § 199-20.4(11)b.

⁹ MD. ADMIN. C. § 20.31.03.01(D); MD. ADMIN. C. § 20.31.01.08 (“reasonable alternate payment plan” required).

¹⁰ N.H. ADMIN. R. § PUC 1205.03(a)-(b).

¹¹ N.D. ADMIN. C. § 69-09-01-18.1(1).

¹² OKLA. ADMIN. C. § 165:45-11-14(f)(4).

¹³ 52 PA. C. § 56.114 (medically certified customer has “obligation to ... equitably make payments on all bills”); 52 PA. C. § 56.116 (medically certified customer “shall retain a duty to make payment”).

¹⁴ WIS. ADMIN. C. § PSC 113.0301(13)(a) (After providing “a licensed Wisconsin physician’s statement or notice from a public health, social services, or law enforcement official which identifies the medical or protective services emergency and specifies the period of time during which disconnection will aggravate the circumstances,” the utility shall postpone the disconnection of service, and “[d]uring the extension of service, the utility and customer shall work together to develop resources and make reasonable payment arrangements in order to continue the service on a permanent basis.).

Iowa¹⁵ and Maryland¹⁶ offer factors to be considered in determining any customer's payment plan, including but not limited specifically to those who are medically certified, but do not specifically define the required minimum payment.

Oregon requires that medically certified customers enter into a “written time-payment agreement” in accordance with the regulations that apply to all customers, not just those with a medical certification, which require a minimum payment of 1/12th of the arrearage.¹⁷

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¹⁵ IA. ADMIN. C. § 199-20.4(11)b.

¹⁶ MD. ADMIN. C. § 20.31.01.08(E).

¹⁷ ORE. ADMIN. R. § 860-021-0410(5); ORE. ADMIN. R. § 860-021-0415(3).